IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

TUESDAY, THE 17TH JULY 2007 / 26TH ASHADHA 1929

RP(FC).No. 73 of 2002()

MC.407/2000 of FAMILY COURT MANJERI. DT.18.5.2002
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PETITIONER/ REVISION PETITIONER

FATHIMA, AGED 35, D/O. YAKKIPARAMBAN MARAKKARKUTTY, THAITHODIKA VEEDU, P.O. CHEEKODE, CHERUVARYOOR, MALAPPURAM.

BY ADV. SRI.K.S.MADHUSOODANAN

RESPONDENTS: RESPONDENT:
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1. KOLOTHUMTHODI MUSTHAFA, AGED 40, S/O. BEERANMUNNI, KOLOTHUMTHODI VEEDU.

2. STATE OF KERALA TO BE REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI.BABU S. NAIR

THIS REV.PETITION(FAMILY COURT) HAVING BEEN FINALLY HEARD ON 17/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.R. UDAYABHANU, J.

R.P.(F.C.).NO. 73 OF 2002

DATED THIS THE 17th July 2007

ORDER

The revision petitioner is the wife/petitioner in M.C.No.407/2000 filed under Section 125 Cr.P.C. which was dismissed by the Family Court. It is the case of the petitioner that herself and the respondent got married in 1983 and they have got five children in the wedlock. She used to be ill-treated by the respondent and that on 7-1-2000 the respondent and his brother and others assaulted her and she was hospitalised and thereafter she was taken to her parental home. He has not looked after her thereafter. Further he has married another lady on 20-8-1999. 25 sovereigns and cash and furniture given to her by her parents was misappropriated by the respondent. The respondent is a dealer in copra and is getting a sum of Rs.20,000/- per month. She has claimed maintenance at the rate of Rs.500/- per month.

2. The respondent on the other hand has contended that

the petitioner left his house on her own accord after the incident that took place on 7-1-2000 when she managed to fetch his brother to the house and stabbed him with a sickle on account of the suspicion entertained by her that it was his brother who alerted the nearby residents and locked herself and one Mani inside the house on the previous day at 8'O clock in the night. The people had caught hold of Mani who was having illicit relationship with her and beat him publicly in the road in front of the house. It is also contended that the petitioner works as a tailor and earns Rs.100/- daily.

3. The evidence adduced in the matter consisted of the testimony of PW1 and RWs.1 and 2 and EXts.D1 to D4.

4. Counsel for the revision petitioner has stressed the fact that the very allegation of unchastity itself is cruelty towards the woman; and he has also relied on the decision reported in **Philip v. Susan Jacob (2001(1)KLT 890** in support of the same. According to him, under Section 125 Cr.P.C. maintenance can be denied to her only in case it is proved that she is living in adultery and that the lower court itself has held that the

evidence is insufficient to estbalish the above ground. It was also brought out in evidence that the children are living with the respondent/husband. Further C.C.No.113/2000 for the offence under Section 326 is pending in which the petitioner/wife is the accused. The allegation is that she stabbed the younger brother of the husband. RW2, a resident of the locality has testified that on 6-1-2000 at 8'O clock in the night one Jamal told him that Mani is inside the house of the respondent. Himself and others bolted the door of the house of the respondent from outside and opened the rear door and Mani was taken out and beat up. He was sent away with a warning that he should not be seen in the locality thereafter. RW2 has also stated that he had seen Mani in the house of the respondent in his absence on a number of occasions. Although nothing was brought out as such to disbelieve the version of RW2, the court below has observed that occasional lapse of virtue is insufficient to deprive maintenance to the wife, and rightly so.

5. In support of the case of the revision petitioner that she was assaulted and driven out of the house, the only evidence is

her own version. She has not produced any documentary evidence to prove that she was admitted in the hospital. It is admitted that the police did not register a case on her complaint and she preferred a private complaint before the Chief Judicial Magistrate, Manjeri which was forwarded to the police under Section 156(3) Cr.P.C. The police after investigation filed a refer report. Thereafter she has filed a complaint before the Judicial First Class Magistrate alleging offences under Sections 498-A and 323 I.P.C. It is also noted that she has no case of ill-treatment on the part of the respondent before the alleged occurrence. She has admitted the incident on 6-1-2000. But according to her, the people who assembled were the friends of the respondent.

6. The court has also noted that the evidence with respect to Exts.D1 to D4 documents indicated some sort of extra marital relationship on her part. Ext.D1 is the letter allegedly written by Mani, the alleged paramour but the same was not admitted by her. It has also to be noted that the identity of Ext.D2 photograph has also not been established. But the court has

noted that Ext.D3 series of 10 rupee notes has been identified by her. There are some writings in the notes and it was suggested that the same were handed over to her by somebody else. D4 is the pass book of Nithyanidhi deposited in the name of the petitioner. The same is not helpful to the case set up by the respondent. According to the respondent/RW1, Ext.D1 series of documents were taken out by him from her drawer breaking open the same. It was in the above circumstances that the court below has arrived at the conclusion that it appeared that the petitioner has left the house on her own accord. Apart from the interested testimony of PW1,the petitioner, there is no other independent or objective evidence to establish the allegations raised in the petition.

In the circumstances, I find that the findings of the court below are not liable to be interfered in exercise of the revisional jurisdiction of this Court. The revision petition is dismissed.

K.R.UDAYABHANU, JUDGE

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K.R.UDAYABHANU, J

R.P.(F.C.)NO. 73 OF 2002
ORDER

17-7-2007